

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA

Plaintiff

v.

PUERTO RICO ELECTRIC POWER
AUTHORITY

Defendant

*
*
*
*
*
*
*
*
*

Criminal No. 98-127(SEC)

ORDER

Pending before the Court is Puerto Rico Electric Power Authority's (PREPA) motion for termination of probation (Docket # 107). The Government has opposed PREPA's request (Docket # 108). After carefully reviewing the parties' filings and the case record, we find that PREPA's request should be **GRANTED**.

PREPA avers that it has satisfied its conditions of probation.¹ The Settlement Agreement in this case provided for two criteria to determine the term of PREPA's probation: (1) a minimum of two years of burning 0.50% sulfur fuel at the Palo Seco and San Juan power generating facilities; and (2) a minimum of 18 months of VECA readings at Palo Seco and Costa Sur (Docket # 67). Per PREPA's motion, it has already combusted 0.50% sulfur fuel at Palo Seco and Costa Sur for at least two years, satisfying one of the two conditions. Second, as to the VECA Project, the VECA began taking Method 9 readings on May 5, 2003. Therefore, by November 5, 2004, the VECA project had completed a full 18-month complement of readings. Furthermore, with the Court's instruction, since November 19, 2004, the VECA has continued to read at Costa Sur, but not at Palo Seco. Finally, PREPA stresses that over the entire span of approximately twenty-two months and more than 1800 completed VE readings, the Government has not notified PREPA or the Court of a

¹ At the time PREPA filed its motion, the only remaining outstanding condition was combustion of 0.50% sulfur fuel at Palo Seco and Costa Sur for two years. In its motion PREPA averred that this condition would be satisfied on March 14, 2005.

single air probation violation and PREPA has abided by each and every other condition of its probation, including those imposed as recently as November 10, 2004 with respect to the funding of air monitoring stations.

In turn, the Government requests that PREPA's probation not be terminated until May 5, 2005, its calculated full term of probation. Per the Government's response to PREPA's motion, the Settlement Agreement required PREPA to burn 0.50% sulfur fuel for 24 months. Since the VECA was approved by the Court on May 5, 2003, 24 months from May 5, 2003 is May 5, 2005. However, the term applicable to the VECA readings was the eighteen-months term, not the two years. As to the two-year term, PREPA commenced burning low-sulfur fuel on March 14, 2003, as reported to the Probation Office on April 29, 2003. Moreover, under the terms of a Modified Consent Decree being supervised by U.S. District Judge Carmen C. Cerezo in the action captioned United States & Comunidades Unidas Contra La Contaminación v. PREPA, Civil Case No. 93-2527(CCC), PREPA has made a commitment with the United States Department of Justice, the United States Environmental Protection Agency, and to Judge Cerezo that it will continue to burn this low-sulfur fuel until at least July of 2006, more than for years beyond the date required by the terms of PREPA's conditions of probation in this action.

Previously, on November 9, 2004, the Government had requested that the Court modify and extend PREPA's conditions of probation (Docket # 99). PREPA opposed said request (Docket # 100). However, by that date it remained for PREPA to complete the funding of the air monitoring stations as enhanced by the Court's decisions at the Status Conference and embodied in the Court's Order dated December 15, 2004. PREPA had also yet to complete the required two-year burn of 0.50% sulfur at the Palo Seco and San Juan plants. The Court granted the Government's request (Docket # 102). Nonetheless, the Court "indicated that the goal was to terminate PREPA's probation as soon as it could responsibly do so." (Docket # 101).

Criminal No. 98-127(SEC)

3

Said objectives have now been achieved. On February 28, 2005 PREPA, for a second time, tendered two checks to EQB, one in the amount of \$338,250.00 to fund capital costs, and a second check in the amount of \$267,324.00 to fund the operation of five stations for a minimum of three years. EQB has accepted and deposited them in the appropriate account. Thus, the time is ripe for PREPA's probation term to end. Accordingly, the Court hereby **TERMINATES** the United States Probation Office's supervision of PREPA.

Having deemed PREPA's probation terminated, the Court hereby acknowledges: (1) PREPA's commitment to environmental compliance and the resulting improvements, all to the benefit of the people of Puerto Rico; (2) the effective participation of the Environmental Protection Agency which contributed to a favorable outcome of this controversy; (3) the important contribution made by CUCCo, especially by Ms. Hilda Ramos; and (4) the professional conduct and cooperation by counsel for both parties.

SO ORDERED.

In San Juan, Puerto Rico, this 19th day of April, 2005.

S/ *Salvador E. Casellas*
SALVADOR E. CASELLAS
United States District Judge